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Testimony
Before the Task Force on Improving the National Environmental Policy Act
Committee on Resources
United States House of Representatives

Hearing on the Role of NEPA
in the States of Washington, Oregon, Idaho, Montana and Alaska

April 23, 2005
Spokane, Washington

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Task Force on Improving NEPA
Committee on Resources
April 23, 2005 - Spokane, Washington

Madame Chairwoman and Members of the Task Force, thank you for inviting me to participate in today's field hearing. It is an honor to be present and to have an opportunity to discuss ways to improve the National Environmental Policy Act.

The Task Force asked that my testimony focus on differences between the intent of the framers of NEPA and the manner in which the law is implemented today. The perspective I bring to this task is shaped by three major influences.

First, I have worked as an attorney on NEPA-related matters for 22 years, and am familiar with the way the law has been applied in numerous and diverse contexts, including, among other things, cross-border electric power lines, federal water contracts, federal dam operations, pipelines, hydropower licensing, military base realignment, fish and wildlife restoration, and radioactive waste.

Second, I have served for most of the last decade as a trustee of the University of Wyoming's Institute for Environment and Natural Resources, along with each sitting and several former Wyoming governors, Senator Craig Thomas, and former Senator Al Simpson, leadership of the state legislature, and representatives of virtually every agricultural, energy, and environmental constituency in the state. The University's Institute sponsored an extended analysis of ways to improve NEPA implementation, involving, among others, former Resources Committee staff counsel.

Third, over the past two and a half years I have had the privilege of serving as chair of a very diverse, bipartisan federal advisory committee, formally known as the National Environmental Conflict Resolution Advisory Committee or NECRAC, focused on ways to prevent and resolve environmental conflicts and measures to improve implementation of NEPA so as to fulfill its policy goals. The Advisory Committee's work offers ideas that respond directly to this Task Force's mandate and I will describe the Advisory Committee's work and findings later in my testimony. My testimony today is given on behalf of the Advisory Committee, though at certain points, I will offer my individual opinion.

To begin, let me note how fitting it is to hold this first NEPA Task Force hearing here in Spokane. In many respects, the State of Washington, not the District of Columbia, is NEPA's home. Henry M. Jackson, who first served six terms in the House of Representatives, then Chaired the Senate Committee on Energy and Natural Resources from 1963 to 1980, is widely recognized as the central figure in NEPA's creation. Many other people were involved, including his senior committee staff Bill Van Ness and Dan Dreyfus, and his advisor Dr. Lynton Caldwell, but Senator Jackson shepherded NEPA from introduction to enactment.

Washington's former senator, who played a leading role promoting development of western natural resources through support for multiple use of public lands, reclamation

farming, and hydropower development, is the father of America's environmental policy. He knew what he, his constituents, and the country were dealing with. Here, from a statement he made in 1969, is how Senator Jackson explained to his colleagues in Congress the problem he was trying to solve:

> Over the years, in small but steady and growing increments, we in America have been making very important decisions concerning the management of our environment. Unfortunately, these haven't always been very wise decisions. Throughout much of our history, the goal of managing the environment for the benefit of all citizens has often been overshadowed and obscured by the pursuit of narrower and more immediate economic goals.
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> It is only in the past few years that the dangers of this form of muddling through events and establishing policy by inaction and default have been very widely perceived. Today, with the benefit of hindsight, it is easy to see that in America we have too often reacted only to crisis situations. We always seem to be calculating the short-term consequences of environmental mismanagement, but seldom the long-term consequences or the alternatives open to future action.
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> [T]he present problem is not simply the lack of a policy. It also involves the need to rationalize and coordinate existing policies and to provide a means by which they may be continuously reviewed to determine whether they meet the national goal of a quality life in a quality environment for all Americans. Declaration of a national environmental policy could, however, provide a new organizing concept by which governmental functions could be weighed and evaluated in the light of better perceived and better understood national needs and goals.
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> The introduction of these bills is a manifestation of public and Congressional concern which is widely felt and widely expressed. The concern is that we may be giving insufficient public attention to one of the most serious threats to the future well-being of our Nation and our civilization-the mismanagement and degradation of our physical environment.[1]

The public perception of impending environmental crisis was probably more acute and widespread in 1969 than it is today, when many environmental problems tend to be harder to see. A declining species or gradual change in ocean or atmospheric chemistry is not as apparent to the average person as a belching smokestack or burning river. I have heard NEPA criticized as being out of date. Written for a different, simpler era. It may be fair to say that the law was written <u>in</u> a simpler era, at least to the extent that the polarities of good and bad, dirty and clean, were in sharper contrast. But it badly shortchanges Senator Jackson and NEPA itself to say that the law was written <u>for</u> a simpler era and, as such, is not a good fit for today. I ask you to listen to what Senator Jackson said in 1969, explaining why his proposed legislation included an overarching statement of national environmental policy:

[1] Hearing before the Committee on Interior and Insular Affairs, April 16, 1969, Introduction of S.1075, S. 237 and S.1752 91st Cong. first session.

> As a nation, we have failed to design and implement a national environmental policy which would enable us to weigh alternatives, and to anticipate the undesirable side effects which often result from our ongoing policies, programs and actions.
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> * * * *
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> A statement of environmental policy is more than a statement of what we believe as a people and as a nation. It establishes priorities and gives expression to our national goals and aspirations. It serves a constitutional function in that people may refer to it for guidance in making decisions where environmental values are found to be in conflict with other values.[2]

An expression of national goals and aspirations. Guidance in making decisions where values may be in conflict. A constitutional function. These attributes of the law do not go stale with time.

The National Environmental Policy Act combines philosophy, policy and process. NEPA is best known for its process: it is the law that requires federal agencies to conduct environmental reviews and prepare environmental impact statements, a procedure that has been copied by many states and by nations around the world.

NEPA is less well recognized for the truly remarkable and far-sighted philosophy at its core, which is stated in NEPA Section 101. The statute defines a National Environmental Policy for the United States. How many Americans know that our country has a national environmental policy and that it has been the law of the land for three decades? Even NEPA practitioners who know that the policy exists often have trouble recalling its terms. [The text of Section 101 is reproduced in Appendix 1].

NEPA Section 101 declares that it is and shall be the continuing policy of the federal government to create and to maintain conditions under which man and nature can exist in productive harmony. The federal government is to use all practical means to improve and coordinate federal plans, functions, programs and resources to achieve a wide range of social, cultural, economic, and environmental values. And NEPA is clear in stating that each American has a responsibility to contribute to the preservation and enhancement of the environment. The nation's environmental policy is written in expansive, hopeful terms that virtually all Americans would accept.

NEPA's purpose usually has been characterized as "better incorporation of environmental values in federal agency decision-making." This is true, but it is only partly descriptive of NEPA and it does not do justice to the vision of the drafters of the law. They had something more encompassing in mind. Agency decision-making was to change to incorporate environmental values not for their own sake, but because doing so

[2] Hearing before the Committee on Interior and Insular Affairs, April 16, 1969, Introduction of S.1075, S. 237 and S.1752 91st Cong. first session., Appendix 2.

would improve our nation's governance. And improved governance would (to paraphrase the law) function in a manner calculated to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

In other words, people--families, businesses and communities--have been part of NEPA from the very beginning, and not as subordinates to environmental values, but as the beneficiaries of them and participants in their realization. The drafters of NEPA set a policy for the United States that expressly integrates environmental quality with the quality of our country's economy and culture. Section 101 articulates a national policy for the environment that is an elegant and compelling philosophy of balance, innovation, and personal responsibility. It comes as close as anything I know of to framing a set of environmental, economic, and social goals that most Americans could agree upon. It holds the potential to bring common purpose to our fellow citizens' dealings with each other and their government over natural resource and environmental issues.

My advice to the Task Force can be summarized this way: NEPA was written to deal with the problem of uninformed, indifferent, or careless government action harming the human environment. It is an excellent statute. NEPA is inspired, forward looking, valuable, and entirely suitable as written to our country's contemporary needs. The risk of poorly informed government action is a non-partisan, 50-state, enduring problem, and NEPA is a vital tool in limiting that risk.

I am well aware that not everyone sees the statute in a favorable light. We need to acknowledge that some of the criticism of NEPA is motivated by dissatisfaction with the degree to which environmental concerns limit economic development choices. Some interests simply believe that the law is too protective of environmental values, while others believe that it does too little.

We must understand and respect those perspectives; people have different values and different interests. Yet when I hear NEPA criticized that way, three things come to mind.

I remember the two most heated, personal denunciations of the law I have ever heard, both of which happened to come from Wyoming ranchers. Real ranchers. Hard core private property advocates.

The first rancher attacked NEPA because the federal government was not doing enough to prevent recreational ORV users from tearing through his grazing allotment. *They should be doing an EIS on those people and stopping them from destroying my pastures and ripping up the creeks!* The second rancher was outraged and nearly desperate because saline groundwater pumped from a federally permitted coalbed methane well was flowing across his land, eroding pastures, and killing off the only trees for miles around. *How can the feds let them do that to us? They should have done an EIS and stopped it!* Third, without naming names, I will say that anyone who practices

in the NEPA area knows of many, many instances where NEPA has been successfully invoked, in litigation or otherwise, by economic development interests against their private sector competitors.

The real problem with NEPA is not that it is too green or not green enough. Most of the criticism of NEPA, whether the critic recognizes it or not, is rooted in the way the law is implemented, not in the fact that the law seeks to protect the quality of the human environment. The problem is that parties with different values compete for primacy in agency decision-making and agencies sometimes do not administer or manage the competition effectively.

Let me describe how NEPA is often experienced by regulated parties, interested citizens, and even other government agencies. At the risk of unfairly generalizing, the stereotypical federal government agency has limited financial and personnel resources, resents criticism, resists sharing authority, and rewards conformity and predictability. For these and other reasons--increasingly because of budgetary constraints--many agencies are reluctant to give the public a meaningful voice in agency decisions.

When that happens, people feel left out and angry. Agency decisions made under NEPA are often challenged by parties who perceive their interests to have been ignored or handled without appropriate respect. Challenges come from all directions: ranchers downstream of federally permitted mining operations; communities facing loss of tax base due to land trades or closure of federal facilities; cities or states competing for water supplies; homeowners facing loss of property value or family safety due to new roads; environmentalists opposed to loss of natural places; developers denied economic opportunities.

There is also another common experience of NEPA implementation. Let me again invoke the stereotypical government agency. Especially in those cases where the agency has responsibilities that implicate both economic and environmental values, the agency often does not know what to do when those values appear to be in conflict. Though equipped with professional expertise--scientists, engineers, planners, economists, lawyers--and a genuine commitment to public service, agencies often face competing legislative mandates, conflicting political influences, and varied understandings of the public interest. Inaction or indecision often seems the safest choice. In my practice, which largely consists of representing business and other private sector development interests on environmental matters, I regularly experience the intense frustration of businesspeople over the apparent inability or unwillingness of agencies to simply make a decision, any decision, even a "no," in a reasonable time frame. Usually we can overcome the delay, but not always.

These sorts of experiences with NEPA reveal two major problems in NEPA implementation. These problems lie at the heart of much of the criticism directed at the statute and explain why NEPA has yet to fulfill the vision of its drafters.

The first problem is that the courts and federal agencies have mostly dismissed or ignored the law's statement of policy.[3] The U.S. Supreme Court has declined to enforce NEPA's statement of purpose, though the courts have generally been willing to enforce the law's procedural requirements. Agencies have taken the cue from the Court and rarely paid more than lip service to achievement of NEPA's purposes, while pouring significant effort into NEPA's procedures. Yet NEPA is the National Environmental Policy Act, after all; and the policy is expressed clearly and forcefully in Section 101. It is there to be used, but it rarely plays a central role in decision-making.

As a consequence, NEPA's procedures are often mistaken for its policy. Process (i.e., the environmental review mandated by Section 102 of the law) was intended by the drafters of the statute to serve to fulfill the law's policy, not to substitute for it. Sections 101 and 102 are complementary, not interchangeable. The strength of NEPA's policy statement has been under-used and under-recognized. The fact that the federal courts have declined to enforce the law's policy does not mean that the federal government should not attempt to achieve it. The thing we need the most to resolve problems and understand each other is a common language. NEPA has it, it is in Section 101, and we need to use it.

The second major problem with NEPA is that federal agencies have not been adequately creative or strategic in deciding how to work with NEPA's provisions for public involvement. NEPA pushes agencies to be better informed and more thoughtful about their plans, and to involve the public, but it does not tell the agencies how to take optimal advantage of the thoughtfulness and knowledge of the American public in shaping agency plans. The NEPA process requires agencies to involve the public, but it does not say how best to engage informed interests and affected communities.

The burden has largely fallen on federal agencies to decide what to do with the diverse opinions of interested parties who choose to express their views on a proposed federal action. Under the traditional model for NEPA implementation, agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project. The agency's decision, though based on a collection of views and interests, is generally not a collective decision. As noted above, that means that parties too often feel aggrieved or alienated by the decision.

Because many, though not all, decisions affecting the environment are made in the context of NEPA, NEPA often takes the blame for what is, in fact, not a problem with the law, but a problem with the style of governance that agencies follow. What prevents agencies from making timely decisions is not NEPA, it is the complexity of the decisions for which they are responsible. What prompts litigation is not NEPA, but the inadequate recognition or resolution of different values in the decision making process.

[3] The judicial treatment of NEPA has been explored by numerous legal scholars. The articles in Appendix 2 are particularly useful.

NEPA, used strategically, can actually help address the problem of the disaffected citizen litigant and the problem of the indecisive or equivocal agency. These problems result from the way in which federal agencies organize themselves to make decisions on matters that affect the environment. By using NEPA better, the agencies can bring NEPA closer to the intent of the framers of the statute.

Congress showed recognition of these problems with NEPA implementation in 1998 and the potential route to improvement when it directed the Morris K. Udall Foundation to create the U.S. Institute for Environmental Conflict Resolution as an independent, impartial federal institution to assist all parties in resolving environmental, natural resources, and public lands conflicts where a federal agency is involved, and "to assist the Federal Government in implementing Section 101 of the National Environmental Policy Act of 1969."

In 2000, a bipartisan group of U.S. Senators from Idaho, Montana, Nevada and Wyoming asked the U.S. Institute to investigate "strategies for using collaboration, consensus building, and dispute resolution to achieve the substantive goals of NEPA" and to "resolve environmental policy issues…." The U.S. Institute conducted initial analytical work in response to the Senators' inquiry, then, in 2002, created a Federal Advisory Committee, formally known as the National Environmental Conflict Resolution Advisory Committee (NECRAC), to provide advice on future program directives—specifically how to address the U.S. Institute's statutory mandate to assist the federal government in implementing Section 101 of NEPA.

The NECRAC members come from every sort of community across the country and have served at every relevant level of public and private sector leadership. They are a remarkable group. The Committee includes ranchers, foresters, a utility executive, environmentalists, tribal leaders, litigators, planners, politicians, former and current Congressional staff, grant makers, farmers, and scientists-- they cover the map. Many Committee members have strong partisan political credentials. The Committee's membership also includes several of the most seasoned dispute resolution professionals in the country; including individuals who literally pioneered the field of environmental conflict resolution over 30 years ago. The members are veterans of some of the most intense battles in the country's natural resource and environmental wars--livestock grazing, air and water pollution, protected species, Indian rights, environmental justice, international boundaries, highway-building, forest management, water allocation.

This group is so diverse it had every reason to fracture and spin off in different directions long before it could render useful advice to the U.S. Institute. But that didn't happen. The Committee held together and found common ground. Despite the times, the Committee never fell prey to partisan division. The Committee produced and unanimously approved a very substantial report that is literally at the printers today, though a near final draft is posted on the U.S. Institute's website, http://ecr.gov/necrac/reports.htm. I encourage the Task Force to consider the views of the National Environmental Conflict Resolution Advisory Committee as you move forward to determine how to improve NEPA. Allow me to summarize the group's work.

The Advisory Committee:

- Analyzed the means by which environmental conflict resolution is employed by federal agencies, and, using detailed case studies, focused considerable effort on understanding the circumstances in which conflict resolution processes have helped agencies make decisions that earned broad and durable support from parties affected by or interested in the decision. The Committee considered cases where the U.S. Institute had been involved as well as others;
- Reviewed the language and legislative history of NEPA and federal court decisions interpreting the law;
- Surveyed federal agencies to determine whether and how agencies apply the national environmental policies articulated in Section 101 of NEPA;
- Developed a comparison between the principles and policies expressed in NEPA and the characteristics that define successful environmental conflict resolution;
- Met with community leaders and advocates to learn about their experiences with NEPA implementation; and,
- Identified the principles and practices that have proven effective at engaging those types of communities and interested parties who, though potentially affected by agency actions, typically lack the financial, technical or other resources that are needed to influence agency decisions or, irrespective of available resources, simply do not trust agencies to respect their interests.

The Committee found that, three decades after NEPA was enacted, environmental protection has become a widely accepted social goal, and the nation has enjoyed many successes in conservation of public resources, reduction of pollution, and remediation of damage done by prior generations. Many of these achievements came about through NEPA-governed decision processes. The traditional model for NEPA implementation is not a failure.

The Committee also found that the traditional model for NEPA is certainly is not a complete success, either. The number of points where interests are coming into conflict on environmental matters is not decreasing and environmental issues appear to be increasing in scope and complexity. The decision-making success stories, though real, are shadowed by too many failures. The Committee reported that:

> Agency decisions affecting the environment are often highly confrontational. Project and resource planning processes routinely are too lengthy and costly. Environmental protection measures are often delayed. Public and private investments are foregone. Decisions and plans often suffer in quality. Hostility and distrust among various segments of the public and between the public and the federal government seem to fester and worsen over time. The traditional model for NEPA is not responsible for all these problems--indeed it is not even applicable in all cases--but it does not take full advantage of the many strengths of Section 101. NEPA, a tool meant to foster better governance to help America find productive harmony between people and nature, is now, in some cases, used

> or experienced as a process available to delay or defer agency decisions or as a negative intrusion into socially important government and private sector initiatives.
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> People are inevitably going to have different views about federal actions potentially affecting the human environment, and there is absolutely nothing wrong with that. It is a deeply rooted American value that citizens and their government at all levels should be in continuous dialogue aimed at successfully reconciling our diverse interests and values. We are a country that prides itself on diversity–a hallmark of a pluralistic and democratic society. It should not be surprising or seen as problematic that interests and values will come into conflict–the fact that they do is a vital aspect of societal growth and fuels creative aspects of our collective lives. But freedom of expression and freedom of thought and the right to petition for redress, and ultimately the right to vote, are about more than shouting into a void.
>
> Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA. It cannot be the best we can do, nor can it be what NEPA's drafters intended.

Could a different approach, in appropriate circumstances, better reflect NEPA's policies and help our country achieve the law's valuable purposes? The U.S. Institute's Advisory Committee believes that we can, in fact, do a much better job.

During the same three decades that have passed since NEPA was enacted, a new profession has emerged that is committed to development and application of conflict-avoidance and conflict-resolution techniques in the context of environmental decision-making and environmental disputes. "Environmental Conflict Resolution," or "ECR," is best understood as a mechanism to assist diverse parties to gain an understanding of their respective interests and to work together to craft outcomes that address those interests in effective and implementable ways.

ECR takes many forms and can be applied in many settings, but in the context of federal decision-making, it enables interested parties (including state, tribal, and local governments, regulated parties, affected communities, and citizens) to engage more effectively in the decision-making process. Interested parties are no longer merely commenters on a federal proposal, but act as partners in defining federal plans, programs, and projects. ECR offers a set of tools, techniques and processes that can complement traditional NEPA processes and improve the procedural and substantive quality of agency decisions.

The Committee reviewed numerous case studies of environmental conflict and conflict resolution. Those studies revealed principles and practices of successful conflict resolution. These principles and practices significantly contribute to the establishment of appropriate levels of respect, trust, accountability, responsibility, and shared commitment. The key factors leading to these results are commitment of time and energy of all parties, balanced representation among interests, appropriate use of third party neutrals, significant autonomy for the decision making group and procedural fairness. Additional factors include reliance on an agreed scope of issues, careful consideration of "implementability," and access to reliable, relevant information.

The Advisory Committee found a striking similarity between the policies set forth in Section 101 of NEPA and the principles and practices that characterize effective environmental conflict resolution. Where NEPA calls for productive harmony, the protection of health and environmental quality, sustainability and general welfare, environmental conflict resolution practices call for balanced representation of affected interests and values. Where NEPA calls for social responsibility, intergenerational welfare, sustainability and stewardship, environmental conflict resolution calls for full consideration of the short- and long-term implications of agreements and decisions, responsible and sustained engagement of all parties and wide access to the best available information.

Well designed and executed environmental conflict resolution processes are capable of producing federal agency decisions that reflect NEPA's principles. Common interests can be identified. The range of disagreement can be narrowed. Decisions can be made in a timely way and social and intellectual capital can be built. Federal officials become partners with affected interests in a process where the issue is "owned" by all participants without the forfeiture of government's legal limits and responsibilities.

Said another way, NEPA's policies and environmental conflict resolution techniques are available to serve as mutually reinforcing tools, which work in tandem with NEPA's analytical requirements, to help the federal government make sound decisions. The policies framed in NEPA can provide a common language, while environmental conflict resolution practices can create the conditions under which a common language and productive strategies can be applied to reconcile different interests toward mutually agreed outcomes.

The Committee placed particular emphasis on the importance and effectiveness of agency efforts to engage with potentially interested parties very early in the process of setting policy, defining programs, or framing projects. The investment of time, effort, and thought "upstream" can reduce the risk of disputes "downstream," when positions may have hardened and options narrowed. Early engagement with potentially affected parties will also facilitate consideration of matters on broad substantive and temporal scales.

Mere involvement of appropriate interests is not enough, however, to improve decision-making. The decision-making process often can be improved if the involvement

is governed by appropriate conflict resolution practices and principles and, where useful, guided by experienced facilitators or mediators. This is especially important in high conflict, complex, multi-party disputes. Where the process of making a federal decision involves the right parties, focuses on the full range of issues, uses scientific and other advice, and follows the appropriate conflict resolution principles and techniques, the odds are significantly improved that the quality of the decision will be higher and the degree of public support for agency programs will be strengthened.

Federal agencies bear a special responsibility to ensure that such processes are appropriately designed and implemented. It may be far worse to attempt a poorly designed environmental conflict resolution process than to follow the traditional practice of agency decision-making without any conflict resolution process. Well-managed environmental conflict resolution practices repair and build relationships and social capital, often critical to long-term implementation and administration of federal programs. Poorly structured processes can be detrimental in the long run, sowing or deepening distrust and disaffection.

The U.S. Institute's Advisory Committee, while seeing great value in the use of environmental conflict resolution and awareness of NEPA's policy goals, recognized that there are limits. Environmental conflict resolution techniques will not solve all problems and not every party will accept NEPA's policies or interpret them in the same way. There will always be cases where brewing disputes cannot be avoided and where existing disputes must be resolved through litigation or political intervention. Timing, parties, external events, information, rules, and resources: The pieces have to fit together to create common ground.

The Advisory Committee concluded, however, that the number and severity of "intractable" cases can be reduced significantly by proper use of environmental conflict resolution and awareness of NEPA's policy--not because the various techniques or statutory language possess any special remedial powers, but because our fellow citizens usually have the capacity to be creative and fair and to want good results for the Nation as a whole.

The Advisory Committee made a series of recommendations to the U.S. Institute designed to promote the use of environmental conflict resolution techniques across the federal government along with increased awareness and use of Section 101 of NEPA.[4] I

[4] The Committee recommended that the U.S. Institute:

- Work with the Council on Environmental Quality to develop approaches to implementing Section 101 of NEPA through environmental conflict resolution;
- Develop a "toolkit" of management approaches for federal executives to transform agency culture in support of environmental conflict resolution and collaboration;
- Develop cross-agency training on environmental conflict resolution and collaboration;
- Identify ways to expand its leadership in developing applications of collaborative monitoring in the context of alternative dispute resolution and adaptive management;

would translate those recommendations somewhat to put them in the context of the work of this Task Force. First, the U.S. Institute's work deserves your full support. This is a valuable agency with tremendous potential to help avoid, resolve, or at least lower the temperature of the conflicts that plague environmental and natural resource management and policy. Second, the agencies under the Resources Committee's jurisdiction, at a minimum, should be challenged to demonstrate that they are committed to improving their governance of decisions potentially affecting the environment by using environmental conflict resolution and NEPA Section 101 as important, early, integral components of their decision making process. Finally, the agencies need adequate financial resources to do this work. I would argue that, over time, the benefit of avoiding or resolving problems "upstream" will save many millions of dollars now thrown at paperwork exercises and litigation.

NEPA can be used by agencies as a venue to bring interested parties together early. Miners and ranchers; host communities and military base planners; neighboring states sharing a river; neighborhoods and transportation engineers; environmentalists and foresters. Public involvement is more than simply allowing the public to comment on a draft EIS. One of the fundamental purposes of NEPA was to make our government smarter about what it does. Agencies do not have a monopoly on good ideas, useful information, or fair outcomes. The analytical requirements of NEPA can be carried out in a way that taps the knowledge, creativity, sense of responsibility, fairness and willingness to compromise that most of our fellow citizens bring to the table.

In sum, NEPA is a valuable law, but its implementation needs to be improved to address real problems experienced by affected interests. The statute will perform at its best if the three key components of the law -- policy, analysis, and public involvement -- are regularly and reliably used in a complementary, mutually reinforcing way. We need to move beyond the current state where too often lots of paper is linked to a limited amount of public involvement with little or no tie to national environmental policy. It is an unstable structure, but it can be repaired with tools that are at hand. When we get policy, analysis, and public involvement working together, we can fulfill the vision and intentions of NEPA's sponsors.

Thank you for this opportunity to testify. I will be happy to respond to questions.

- Collaborate with the Council on Environmental Quality to guide federal agencies and Affected Communities in the application of NEPA using the Affected Communities Subcommittee's recommended framework for environmental conflict resolution and collaboration;
- Continue to foster networks and partnerships that promote the best environmental conflict resolution practices and promote use of technology to facilitate sharing of lessons learned, science, literature and data; and,
- Obtain funding for and implement the U.S. Institute's participation grant program.
- The Committee also recommends that other agencies of government, at all levels, take advantage of the resources represented by effective environmental conflict resolution techniques and the principles and policy of NEPA to improve the quality of agency decisions and earn broader support from affected interests.

National Environmental Policy Act of 1969
Title I
Congressional Declaration of National Environmental Policy
Sec. 101 [42 USC 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may –

- *(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- *(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;*
- *(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;*
- *(4) preserve important historic, cultural and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;*
- *(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and*
- *(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.*

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Appendix 2

Law Review and Journal Articles on NEPA

1. Matthew J. Lindstrom, *Procedures Without Purpose: The Withering Away of the National Environmental Policy Act's Substantive Law*, 20 J. LAND RESOURCES & ENVTL. L. 245 (2000).

2. Sara E. Baynard, *The Extraterritorial Reach of NEPA and The Creation of a Foreign Policy Exemption*, 28 VT. L. REV. 173 (2003).

3. Lori Hackleman Patterson, Comment, *NEPA's Stronghold: A Noose for the Endangered Species Act?*, 27 CUMB. L. REV. 753 (1996).

4. Nicholas C. Yost, *NEPA's Evolution: The Decline of Substantive Review, NEPA's Promise -- Partially Fulfilled.*, 20 ENVTL. L. 533 (1990).

5. William H. Rodgers, Jr., *Symposium on NEPA at Twenty: The Past, Present and Future of the National Environmental Policy Act: Keynote: NEPA at Twenty: Mimicry and Recruitment in Environmental Law*, 20 ENVTL. L. 485 (1990).

6. Peggy Gentles & Donald N. Zillman, *NEPA's Evolution: The Decline of Substantive Review: Article: Perspectives on NEPA in the Courts.*, 20 ENVTL. L. 505 (1990).

7. Lois J. Schiffer, *The National Environmental Policy Act Today, With An Emphasis on Its Application Across U.S. Borders*, 14 DUKE ENV L & POL'Y F 325 (2004).

8. Sarah W. Rubenstein, *Injunctions Under NEPA After* Weinberger v. Romero-Barcelo *and* Amoco Production Co. v. Village of Gambell, 5 WIS. ENVTL. L.J. 1 (1998).

9. Josh Schnell, Note, Natural Resources Defense Council v. United States Department of the Navy*: The District Court for the Central District of California Applies NEPA to the United States Exclusive Economic Zone for the First Time*, 16 TUL. ENVTL. L.J. 215 (2002).

10. Michael C. Blumm, *Symposium on NEPA at Twenty: The Past, Present and Future of the National Environmental Policy Act: Introduction: The National Environmental Policy Act at Twenty: A Preface*, 20 ENVTL. L. 447 (1990).

11. Paul S. Weiland, *Amending the National Environmental Policy Act: Federal Environmental Protection in the Twenty-First Century*, 12 J. LAND USE & ENVTL. L. 275 (1997).

12. Katie Kendall, Note, *The Long and Winding "Road": How NEPA Noncompliance for Preservation Actions Protects the Environment*, 69 BROOKLYN L. REV. 663 (2004).

13. David S. Shilton, *NEPA's Evolution: The Decline of Substantive Review: Article: Is the Supreme Court Hostile to NEPA? Some Possible Explanations for a 12-0 Record*, 20 ENVTL. L. 551 (1990).

14. James L. Connaughton, Keynote Address, *Modernizing the National Environmental Policy Act: Back to the Future*, 12 N.Y.U. ENVTL. L.J. 1 (2003).

15. Leslye A. Herrmann, Comment, *Injunctions for NEPA Violations: Balancing the Equities.*, 59 U. CHI. L. REV. 1263 (1992).

16. Nathan G. Alley & James T.B. Tripp, Colloquium Article, *Streamlining NEPA's Environmental Review Process: Suggestions for Agenda Reform*, 12 N.Y.U. ENVTL. L.J. 74 (2003).

17. William H. Ferguson III, Note, Westlands Water District v. United States: *Forging NEPA into a Double-Edged Sword Against A Biodiversity Statute*, 8 TUL. ENVTL. L.J. 293 (1994).

18. Jason J. Czarnezki, Comment, *Defining the Project Purpose under NEPA: Promoting Consideration of Viable EIS Alternatives*, 70 U. CHI. L. REV. 599 (2003).

19. Oliver A. Houck, Book Review, *Is That All? A Review of the National Environmental Policy Act, An Agenda for the Future*, 11 DUKE ENV L & POL'Y F 173 (2000).

20. Jim Davis, Case Note, *Can NEPA and the ESA Work Together? Designations of Critical Habitat for an Endangered Species Must Fulfill National Environmental Policy Act Requirements.* Catron County Board of County Commissioners v. United States Fish and Wildlife Service, 32 LAND & WATER L. REV. 677 (1997).

21. David G. Perillo, Note, *Designations of Critical Habitat Pursuant to the Endangered Species Act: Does NEPA Apply?*, 7 FORDHAM ENVTL. LAW J. 397 (1996).

22. Paul J. Culhane, *NEPA's Effect on Agency Decision Making: NEPA's Impacts on Federal Agencies, Anticipated and Unanticipated*, 20 ENVTL. L. 681, (1990).

23. David J. Hayes & James A. Hourihan, *NEPA Requirements for Private Projects*, 13 B.C. ENVTL. AFF. L. REV. 61 (1985).

24. Lorna Jorgensen, Note, *The Move Toward Participatory Democracy in Public Land Management Under NEPA: Is it Being Thwarted by the ESA?*, 20 J. LAND RESOURCES & ENVTL. L. 311 (2000).

25. L. Diane Schenke & Sharon Shutler, *The Application of NEPA to Restoration Plans Under the Oil Pollution Act*, 45 BAYLOR L. REV. 345 (1993).

26. Silvia M. Riechel, Note, *Governmental Hypocrisy and the Extraterritorial Application of NEPA*, 26 CASE W. RES. J. INT'L L. 115 (1994).

27. Douglas J. Rosinski, *The Environmental Impact on Foreign Territory From a Proposed Federal Action*, 4 S.C ENVTL. L.J. 177 (1995).

28. Karen A. Klick, Note, *The Extraterritorial Reach of NEPA's EIS Requirement After* Environmental Defense Fund v. Massey, 44 AM. U.L. REV. 291 (1994).

29. Wayne J. Carroll, *International Application of the National Environmental Policy Act*, 4 ILSA J INT'L & COMP L. 1 (1997).

30. Thomas J. Schoenbaum, Symposium, *A Comparative Analysis of Vermont Yankee: A Preface to Three Foreign Views of Vermont Yankee*, 55 TUL. L. REV. 428 (1981).

31. Stephen H. Kupperman, Note, *Environmental Law--NEPA Held Inapplicable to the Revenue Sharing Act*, 51 TUL. L. REV. 156 (1976).

32. Melanie E. Kleiss, Note, *NEPA and Scientific Uncertainty: Using the Precautionary Principle to Bridge the Gap*, 97 MINN. L. REV. 1215 (2003).

33. Cynthia Carlson, *NEPA and the Conservation of Biological Diversity*, 19 ENVTL. L. 15 (1988).

34. Erik Figlio, *Stacking the Deck Against "Purely Economic Interests": Inequity and Intervention in Environmental Litigation*, 35 GA. L. REV. 1219 (2001).

35. Harvey Bartlett, Comment, *Is NEPA Substantive Review Extinct, or Merely Hibernating? Resurrecting NEPA Section 102(1)*, 13 TUL. ENVTL. L.J. 411 (2000).

36. Stark Ackerman, *NEPA's Effect on Agency Decision Making: Article: Observations on the Transformation of the Forest Service: The Effects of the National Environmental Policy Act on U.S. Forest Service Decision Making*, 20 ENVTL. L. 703 (1990).

37. Thomas E. Digan, Comment, *NEPA and the Presumption Against Extraterritorial Application: The Foreign Policy Exclusion*, 11 J. CONTEMP. HEALTH L. & POL'Y 165 (1994).

38. Stephanie Wagner, Recent Development, Douglas County v. Babbitt: *NEPA Does Not Apply to the Creation of Critical Habitats Under the Endangered Species Act*, 5 U. BALT. J. ENVTL. L. 262 (1995).

39. Deirdre Goldfarb, Comment, *NEPA: Application in the Territorial Seas, The Exclusive Economic Zone, The Global Commons, and Beyond*, 32 SW. U. L. REV. 735 (2003).

40. Lynton K. Caldwell, *Beyond NEPA: Future Significance of the National Environmental Policy Act*, 22 HARV. ENVTL. L. REV. 203 (1998).

41. Margaret A. Shannon, Book Review, *Will NEPA be "An Agenda for the Future" or Will It Become "A Requiem for the Past"?: A Book Review of the National Environmental Policy Act: An Agenda for the Future*, 8 BUFF. ENVT'L. L.J. 143 (2000).

42. *Seventh Annual Pace National Environmental Law Moot Court Competition: Brief for Appellant, United States Department of the Interior*, 12 PACE ENVTL. L. REV. 635 (1995).

43. James Jay Tutchton, Case Note, Robertson v. Methow Valley Citizens Council *and the New "Worst Case Analysis" Regulation*, 8 UCLA J. ENVTL. L. & POL'Y 287 (1989).

44. Robert Orsi, Comment, *Emergency Exceptions from NEPA: Who Should Decide?*, 14 B.C. ENVTL. AFF. L. REV. 481 (1987).

45. Browne C. Lewis, *It's A Small World After All: Making the Case for the Extraterritorial Application of the National Environmental Policy Act*, 25 CARDOZO L. REV. 2143 (2004).

46. Jean M. Emery, Comment, *Environmental Impact Statements and Critical Habitat: Does NEPA Apply to the Designation of Critical Habitat under the Endangered Species Act?*, 28 ARIZ. ST. L.J. 973 (1996).

47. Melaney Payne, Case Note, *Critically Acclaimed but Not Critically Followed - the Inapplicability of the National Environmental Policy Act to Federal Agency Actions:* Douglas County v. Babbitt, 7 VILL. ENVTL. L.J. 339 (1996).

48. Heather N. Stevenson, Comment, *Environmental Impact Assessment Laws in the Nineties: Can the United States and Mexico Learn from Each Other?*, 32 U. RICH. L. REV. 1675 (1999).

49. Stephen M. Johnson, *NEPA and SEPA's in the Quest for Environmental Justice*, 30 LOY. L.A. L. REV. 565 (1997).

50. Amy J. Sauber, Comment, *The Application of NEPA to Nuclear Weapons Production, Storage, and Testing:* Weinberger v. Catholic Action of Hawaii/Peace Education Project., 11 B.C. ENVTL. AFF. L. REV. 805 (1984).

51. Myron L. Scott, *Forest Service Planning: Defining NEPA Out of Existence: Reflections on the Forest Service Experiment with "Case-By-Case" Categorical Exclusion*, 21 ENVTL. L. 807 (1991).

52. William C. Moorhouse, Note, *The National Environmental Policy Act, U.S. Counter-Narcotic Policies in Colombia, and Whether Recent Aid Should Require an Environmental Impact Statement*, 26 SUFFOLK TRANSNAT'L L. REV. 133 (2002).

53. Joan Newman, Comment, *A Consideration of Federal Preemption in the Context of State and Local Environmental Regulation*, 9 UCLA J. ENVTL. L. & POL'Y 97 (1990).

54. Timothy Patrick Brady, Comment, *"But Most Of It Belongs to Those Yet to Be Born:" The Public Trust Doctrine, NEPA and the Stewardship Ethic*, 17 B.C. ENVTL. AFF. L. REV. 621 (1990).

55. James A. Kent & Kevin Preister, *Using Social Ecology to Meet the Productive Harmony Intent of the National Environmental Policy Act*, 7 HASTINGS W.-N.W. J. ENV. L. & POL'Y 235 (2001).

56. Douglas J. Rosinski, Comment, *South Carolina Battles Against the Department of Energy for Storage of Spent Nuclear Fuel at the Savannah River Site*, 5 S.C ENVTL. L.J. 157 (1997).

57. Mary Elizabeth Nelson, Note, *Rejection of Risk Under NEPA: Stress and People Against Nuclear Energy*, 33 AM. U.L. REV. 535 (1984).

58. Silvia L. Serpe, Note, *Reviewability of Environmental Impact Statements on Legislative Proposals After* Franklin v. Massachusetts, 80 CORNELL L. REV. 413 (1995).

59. Jennifer L. Byrne, Note, Alaska Wilderness v. Morrison: *The Return of Reasonableness to NEPA Review?*, 26 ENVTL. L. 1287 (1996).

60. Recent Case, *Administrative Law -- Administrative Procedure Act -- D.C. Circuit Holds That Trade Representative's Failure to Prepare Environmental Impact Statement for NAFTA is Not Reviewable Under the Administrative Procedure Act.* -- Public Citizen v. United States Trade Representative, *5 F.3d 549 (D.C. Cir 1993)*, 107 HARV. L. REV. 1819 (1994).

61. Victor B. Flatt, *A Tribute To Honorable Raymond L. Sullivan: Article: The Human Environment of the Mind: Correcting NEPA Implementation by Treating Environmental Philosophy and Environmental Risk Allocation as Environmental Values Under NEPA*, 46 HASTINGS L.J. 85 (1994).

62. Patrick A. Parenteau & Dean B. Suagee, *Fashioning a Comprehensive Environmental Review Code for Tribal Governments: Institutions and Processes*, 21 AM. INDIAN L. REV. 297 (1997).

63. Note, *EIS Supplements for Improperly Completed Projects: A Logical Extension of Judicial Review Under NEPA*, 81 MICH. L. REV. 221 (1982).

64. Jonathan M. Cosco, Note, *NEPA for the Gander: NEPA's Applications to Critical Habitat Designations and Other "Benevolent" Federal Action*, 8 DUKE ENV L & POL'Y F 345 (1998).

65. *Seventh Annual Pace Environmental Law Moot Court Competition: Brief for Appellee-Respondent, Sunpeace*, 12 PACE ENVTL. L. REV. 675 (1995).

66. Jeffrey E. Gonzalez-Perez & Douglas A. Klein, *The D.C. Circuit Review: September 1992 - August 1993: Environmental Law: The International Reach of the Environmental Impact Statement Requirement of the National Environmental Policy Act*, 62 GEO. WASH. L. REV. 757 (1994).

67. Kristine Meindl, Case Note, Kootenai Tribe of Idaho v. Veneman: *The Roadless Rule: Dead End or Never Ending Road?*, 14 VILL. ENVTL. L.J. 151 (2003).

68. Kevin H. Moriarty, Note, *Circumventing the National Environmental Policy Act: Agency Abuse of the Categorical Exclusion*, 79 N.Y.U.L. REV. 2312 (2004).

69. Joel S. Jacobs, *Compromising NEPA? The Interplay Between Settlement Agreements and the National Environmental Policy Act*, 19 HARV. ENVTL. L. REV. 113 (1995).

70. Jeffrey A. Berger, *False Promises: NEPA's Role in Airport Expansions and the Streamlining of the Environmental Review Process*, 18 J. ENVTL. L. & LITIG. 279 (2003).

71. Recent Development, *Fourth Circuit Grants Standing but Denies an Injunction Sought by the Governor of South Carolina to Prevent the Transportation of Plutonium into the State*, 24 J. LAND RESOURCES & ENVTL. L. 129 (2004).

72. Matthew William Nelson, Comment, *NEPA and Standing: Halting the Spread of "Slash-and-Burn" Jurisprudence*, 31 U.C. DAVIS L. REV. 253 (1997).

73. Jill E. Horner, Note, People Against Nuclear Energy v. United States Nuclear Regulatory Commissions: *Potential Psychological Harm Under NEPA*, 32 CATH. U.L. REV. 495 (1983).

74. R. David Kitchen, Case Comment, *NEPA's Overseas Myopia: Real or Imagined?* Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission, 71 GEO. L.J. 1201 (1983).

75. D. Kevin Dunn & Jessica L. Wood, Note, *Substantive Enforcement of NEPA Through Strict Review of Procedural Compliance:* Oregon Natural Resources Council v. Marsh in the Ninth Circuit, 10 J. ENVTL. L. & LITIG. 499 (1995).

76. Joan R. Goldfarb, Comment, *Extraterritorial Compliance with NEPA Amid the Current Wave of Environmental Alarm*, 18 B.C. ENVTL. AFF. L. REV. 543 (1991).

77. Thomas O. McGarity, *Implementing NEPA: Some Specific Issues: Article: Judicial Enforcement of NEPA-Inspired Promises*, 20 ENVTL. L. 569 (1990).

78. *Seventh Annual Pace National Environmental Law Moot Court Competition: Brief for Appellee and Amicus, State of New Union*, 12 PACE ENVTL. L. REV. 707 (1995).

79. Tracey Colton Green, *Providing for the Common Defense versus Promoting the General Welfare: the Conflicts Between National Security and National Environmental Policy*, 6 S.C ENVTL. L.J. 137 (1997).

80. Thomas P. Rowland, Note, Metcalf v. Daley: *The Makah Get Harpooned by NEPA*, 36 GONZ. L. REV. 395 (2000).

81. Richard M. Whitaker, *Environmental Aspects of Overseas Operations*, 1995 ARMY LAW. 27 (1995).

82. Jennifer L. Davis, Comment, *National Environmental Policy Act -- Submission of the North American Free Trade Agreement Without Environmental Impact Statement To Congress Held Unreviewable,* Public Citizen v. United States Trade Representative, SUFFOLK TRANSNAT'L L. REV. 775 (1995).

83. Korey A. Nelson, Comment, *Judicial Review of Agency Action Under the National Environmental Policy Act: We Can't See the Forest Because There Are Too Many Trees*, 17 TUL. ENVTL. L.J. 177 (2003).

84. Jeffrey M. Lovely, Comment, *Protecting Wetlands: Consideration of Secondary Social and Economic Effects by the United States Army Corps of Engineers in Its Wetlands Permitting Process*, 17 B.C. ENVTL. AFF. L. REV. 647 (1990).

85. Robert P. Frank, Comment, *Delegation of Environmental Impact Statement Preparation: A Critique of NEPA's Enforcement*, 13 B.C. ENVTL. AFF. L. REV. 79 (1985).

86. Richard Heisler, Comment, *A Whale of A Tale:* NRDC v. U.S. Navy *and the Attempt to Exempt the Exclusive Economic Zone from the National Environmental Policy Act*, 10 SW. J.L. & TRADE AM. 125 (2003).

87. Robert L. Fischman, *The EPA's NEPA Duties and Ecosystem Services*, 20 STAN. ENVTL. L.J. 497 (2001).

88. Mary K. Fitzgerald, Comment, *Small-Handles, Big Impacts: When Should The National Environmental Policy Act Require An Environmental Impact Statement?*, 23 B.C. ENVTL. AFF. L. REV. 437 (1996).

89. Sandra P. Montrose, Comment, *To Police the Police: Functional Equivalence to the EIS Requirement and EPA Remedial Actions Under Superfund*, 33 CATH. U.L. REV. 863 (1984).

90. Paula A. Kelly, Comment, *Judicial Review of Agency Decisions Under the National Environmental Policy Act of 1969* -- Strycker's Bay Neighborhood Council, Inc. v. Karlen, 10 B.C. ENVTL. AFF. L. REV. 79 (1982).

91. Kourtney Twenhafel, Comment, *Freeport McMoran's Midas Touch: Testing the Application of the National Environmental Policy Act to Federal Agency Action Governing Multinational Corporations*, 4 TUL. J. INT'L & COMP. L. 303 (1996).

92. George Cameron Coggins & Jane Elizabeth Van Dyke, *Implementing NEPA: Some Specific Issues: Article; NEPA and Private Rights in Public Mineral Resources: The Fee Complex Relative?*, 20 ENVTL. L. 649 (1990).

93. *The D.C. Circuit Rreview August 1999 - July 2000: Recent Decision of the United States Court of Appeals for the District of Columbia Circuit: Environmental Law*, 69 GEO. WASH. L. REV. 644 (2001).

94. Peter Bucklin, *The Importance of Standing: The Need to Prioritize Standing Review Under the National Environmental Policy Act of 1969*, 3 J.L. & POL'Y 289 (1994).

95. Case Note, *Environmental Law--Retroactive Application of the National Environmental Policy Act, J. D. C., Jr.*, 39 TENN. L. REV. 735 (1972).

96. Comment, *NEPA's Role in Protecting the World Environment*, 131 U. PA. L. REV. 353 (1982).

97. Peter Fitzgerald & Vania J. Leveille, Note, *When the National Environmental Policy Act Collides with the North American Free Trade Agreement: The Case of* Public Citizen v. Office of the United States Trade Representative, 9 ST. JOHN'S J.L. COMM. 751 (1994).

98. Maria C. Holland, Comment, *Judicial Review of Compliance with the National Environmental Policy Act: An Opportunity for the Rule of Reason*, 12 B.C. ENVTL. AFF. L. REV. 743 (1985).

99. *The D.C. Circuit Review August 1998 - July 1999: Recent Decisions Environmental Law*, 68 GEO. WASH. L. REV. 728 (2000).

100. Loretta V. Chandler, Comment, *Taking the "Hard Look": 9th Circuit Review of Forest Service Actions under NEPA, NFMA, and NHPA*, 4 GREAT PLAINS NAT. RESOURCES J. 204 (2000).

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